

Service Date: August 10, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application)	UTILITY DIVISION
of LONE MOUNTAIN SPRINGS for)	
Authority to Increase Rates and)	DOCKET NO. 92.9.55
Charges for Water Service to Its)	
Big Sky, Montana Customers.)	ORDER NO. 5660d

REVISED INTERIM ORDER

I. BACKGROUND.

1. On September 30, 1992 Lone Mountain Springs, Inc. (LMS) filed an application with the Montana Public Service Commission (Commission) for authority to permanently increase water rates for its Big Sky, Montana customers by approximately 250 percent, an annual revenue increase of approximately \$283,825. Concurrent with this filing for a permanent increase in rates, LMS filed an application for interim rate relief. LMS requested an interim increase in rates of 250 percent, equaling a revenue increase of approximately \$283,825 or 100 percent of the proposed permanent increase.

2. On October 29, 1992 the Commission granted interim relief in the amount of \$75,180 (Order No. 5660). In Order No. 5660 the Commission also ordered that LMS file revised tariff schedules (tariffs) spreading the increased revenues as a uniform) percentage increase to all services.

3. On December 24, 1992, following a motion for reconsideration, the Commission granted additional interim relief in the amount of \$48,751 (Order No. 5660a). The interim increase was ordered effective for services rendered

on or after November 1, 1992. Order No. 5660a, p. 5.
Consistent with Order No. 5660 the Commission also ordered that LMS file revised tariffs spreading the increased revenues as a uniform percentage increase to all services.

4. After the interim relief was granted and following inquiries from LMS customers concerning billing problems, the Commission became aware that LMS had failed to file tariffs reflecting the interim rate increase. Commission staff contacted LMS concerning this failure but LMS took no action. As a result, on June 24, 1993 the Commission issued an Order to Show Cause to LMS. The Commission directed LMS to show cause why the Commission should not immediately take one or more of the following actions:

1) Rescind the interim relief granted LMS by the Commission in Order Nos. 5660 and 5660a;

2) Order a refund of all amounts collected in violation of Order Nos. 5660 and 5660a and Section 69-3-305(1), MCA;

3) Seek the imposition of fines and penalties pursuant to Sections 69-3-209 and 69-3-206, MCA.

5. On July 1, 1993 LMS filed a response brief (hereinafter "LMS Brief"). Therein it requested that the Commission enter an order finding that LMS is not in violation of, and has not failed to comply with, the provisions of Orders Nos. 5660 and/or 5660a and/or Section 69-3-305(1), MCA.

6. On July 15, 1993 Montana Consumer Counsel (MCC) served a reply brief. Though MCC did not propose any specific action, it did argue that LMS's failure to file tariffs was a clear violation of Section 69-3-305(1), MCA.

7. Several interested persons filed comments requesting rate increase be rescinded and/or all monies that the interim improperly collected be refunded. These comments were filed by the Glacier Condominium Association, C.J. Harlan, Harold P. Meabon and the Silver Bow Owners' Association. Intervenor Westfork Properties (WP) filed comments joining in the objections of all other parties and charging that LMS's response was inadequate and incomplete.

II. DISCUSSION.

8. LMS admits that it has not yet filed tariff schedules as required by Orders Nos. 5660 and 5660a. LMS Brief, Request for Admission 1. However, LMS argues as a defense that the Commission failed to fix a time for filing as provided for in Section 69-3-301 (1), MCA. LMS Brief at 4-5. LMS's reliance on this statute is misplaced. Section 69-3-301(1), MCA, sets forth the requirements for the filing of original rates by a utility. See Great Northern Utilities Co. v. Public Service Commission, 88 Mont. 180 208-09, 293 P.2d 294, 300 (1930) (provision is made for the filing of a utility's original rates in Section 3891, Revised Code 1921 [predecessor to Section 69-3-301(1), MCA]). After original rates are filed, changes are made in accordance with the provisions governing changes in schedules and temporary rate changes, Sections 69-3-302 and 69-3-304, M.C.A., respectively. Neither of these section directs the Commission to fix a time specific for the filing of schedules reflecting changes.

9. More on point, however, is the fact that a public utility is prohibited by Section 69-3-305(1), MCA, from charging rates not contained in its filed tariffs. While the

Commission may approve a change in rates, this section makes it clear that the change must be reflected in filed tariffs before it can be lawfully implemented. Arguing against this conclusion, LMS contends that the lawful rates are those set by the Commission in its orders. LMS Brief at 5. There is no doubt that the lawful rates are those set by the Commission. In this respect, Section 69-3-305(2), MCA, even provides that the filed tariffs are the lawful rates until changed by the Commission. However, the Commission reads Section 69-3-305, MCA, as requiring public utilities to reflect current rates in filed tariffs. As a result, before a utility may avail itself of a permanent or temporary or permanent rate change, it must file a revised tariff reflecting the change. To hold otherwise would be to render Section 69-3-305, MCA, meaningless as a utility could lawfully charge and collect rates not reflected in tariffs.

10. There is no factual dispute concerning LMS's failure to file tariffs reflecting the interim rate increase. Nor is it disputed that LMS has charged rates greater than those reflected in its filed tariffs. Therefore, the Commission finds that LMS has violated Section 69-3-305(1), MCA. The Commission also finds that LMS's failure to file revised tariffs is a violation of those provisions of Order Nos. 5660 and 5660a directing LMS to file such tariffs.

11. LMS's failure to file revised tariffs, even after being contacted by the Commission staff, evidences a willful disregard for the Commission's orders and the law. As stated in the Order to Show Cause, the Commission can address this disregard by rescinding the interim increase, ordering a refund, and/or imposing penalties. These are serious actions and the apparent financial instability of the utility in this case requires that the potential for long-term harm be taken

into account. Little would be accomplished if the Commission took an action that resulted in irreparable harm to LMS and, ultimately, the public interest.

12. The Commission believes that LMS financial condition, as evidenced by its application, is such that it could not withstand a full refund of the amounts improperly collected. For this reason, the Commission revises its interim order to reflect a refund with interest of all interim rates already collected and a rescission of all amounts accrued but uncollected, except for those amounts necessary to cover operating and interest expenses. Since the original interim increase granted in Order No. 5660 covered just test-year operating and interest expenses, LMS will therefore refund with interest all amounts collected and forego all amounts accrued but uncollected under Order No. 5660a. The amounts not refunded are intended solely to provide LMS with adequate funds to continue operating as a public utility.

13. The interest rate used in refunding amounts already collected under Order No. 5660a shall be 12.0 percent, the same rate granted to LMS as its return on equity for the interim increase.

CONCLUSIONS OF LAW

1. Lone Mountain Springs, Inc. (LMS) is a public utility furnishing water service to customers in the Big Sky, Montana area. Pursuant to Title 69, Chapter 3 of the Montana Code Annotated (MCA), LMS is subject to the supervision, regulation and control of the Montana Public Service Commission (Commission).

2. The Commission may, in its discretion, grant or deny a

temporary rate increase pending a Section 69-3-304, MCA.

3. Commission Order Nos. 5660 and 5660a granted a temporary rate increase and directed LMS to file revised tariffs.

4. The Commission concludes that LMS has violated Commission Order Nos. 5660 and 5660a by failing to file revised tariffs.

5. Section 69-3-305(1), MCA, prohibits a public utility from charging rates not reflected in its tariffs.

6. The Commission concludes that LMS has violated Section 69-3-305(1), MCA, by collecting temporary rates not reflected in its filed tariffs.

7. Section 69-3-305(3), MCA, authorizes the Commission to order refunds with interest of amounts collected in violation of the same.

ORDER

1. Lone Mountain Springs, Inc. is ordered to refund with interest at 12% all interim rates collected and forego all interim rates accrued but uncollected under Order No. 5660a. This order hereby revises the interim orders issued in Order Nos. 5660 and 5660a.

Done and Dated this 29th day of July, 1993 by a vote of 2-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman
(Voting to Dissent-No Written Dissent)

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the
Commission reconsider this decision. A motion to
reconsider must be filed within ten (10) days. See
ARM 38.2.4806.